

***THE HON'BLE SRI JUSTICE N.V. RAMANA**

+W.P. Nos. 23410 of 2005 and 16996 of 2007

% Dated: 14.12.2007

W.P. No. 23410 of 2005

V. Vishnu Vardhan Reddy, S/o V. Venkat Reddy,
aged 54 years, Occ: Asst. General Manager,
R/o 96-C, Lakshmi Srinivasan, M.L.As Colony,
Road No.12, Banjara Hills, Hyderabad – 34.

..... PETITIONER

VERSUS

\$ Andhra Bank (A Govt. of India Undertaking)
Personal Department, Head Office, Hyderabad,
rep. by its General Manager and another.

.....RESPONDENTS

! Counsel for the Petitioner: Sri V. Rajagopal Reddy

^ Counsel for Respondents: Dr. K. Lakshmi Narasimha,

< GIST:

> HEAD NOTE:

? Cases referred:

1. 1987 (Supp) SCC 228
2. W.P. No. 13288 of 2000, dated 11.08.2000 (Single Judge of AP High Court)
3. (1998) III LLJ 947 (AP High Court)
4. 2004-II-LLJ 83 (Karnataka High Court)
5. (1998) 9 SCC 559
6. (2000) 5 SCC 621
7. (2005) 8 SCC 314
8. (2004) 4 SCC 484
9. (2006) 5 SCC 759

10. 2006 (111) FLR 753
11. (1968) 3 SCR 857 = AIR 1969 SC 180
12. (1978) 3 SCR 12 = AIR 1978 SC 694
13. 2004-II-LLJ 83

THE HON'BLE SRI JUSTICE N.V. RAMANA

-
W.P. No. 23410 of 2005

and

W.P. No. 16996 of 2007

-
Common order:

The petitioner is an Assistant General Manager in Andhra Bank. He filed W.P. No. 23410 of 2005 (hereinafter referred to as 'the first writ petition') seeking to direct the respondents to treat his application for voluntary retirement as withdrawn, and consequently direct the respondents to continue him in service. While the first writ petition is pending before this Court, the petitioner filed W.P. No.16996 of 2007 assailing the proceedings dated 09.07.2004 accepting his application for voluntary retirement and retiring him from service and the consequential order dated 12.07.2004 relieving him from service.

The petitioner joined the respondents-Andhra Bank as Rural Credit Officer in MM-II Cadre on 13.05.1977. He was given promotions to the next higher posts from time to time. He worked at various branches/offices of the respondents within Andhra Pradesh and outside. While working as Assistant General Manager, the petitioner states that because of health reasons, he applied for voluntary retirement on 12.04.2004 to the respondents, with a request to accept his application and relieve him from service as per the rules in force, treating the application as three months notice. Subsequently, the petitioner made another application dated 19.04.2004 requesting the respondents to treat his earlier application dated 12.04.2004 for voluntary retirement as withdrawn, but the respondents denied having

received the same. The petitioner has also not filed any acknowledgement in token of having submitted the said application.

However, the

2nd respondent issued letter dated 21.04.2004 accepting the request of the petitioner for voluntary retirement. The petitioner was informed that he will be relieved from service on 11.07.2004 i.e. after the expiry of the notice period of three months. The petitioner states that he made another application dated 24.06.2004 addressed both to the Chairman and Managing Director and the General Manager requesting them to permit him to withdraw his application for voluntary retirement. However, the respondents by order dated 09.07.2004 declined the said request of the petitioner.

The learned counsel for the petitioner relying on the judgment of the apex Court in **Balram Gupta v. Union of India**^[1] mainly contended that since the petitioner submitted application requesting the respondents to treat his application for voluntary retirement as withdrawn much before the expiry of the notice period, the respondents should not have rejected the same, and as such, the action of the respondents in rejecting the same is illegal, arbitrary and violative of Articles 14, 16(1) and 19(1)(g) of the Constitution of India. In support of this contention, he also placed reliance on several judgments, namely **P.V.K. Vara Prasad v. Andhra Bank**^[2], **Andhra Bank v. Sudha Nagaraj**^[3], **Nagesh B. Prabhu v. Syndicate Bank**^[4], **J.N. Shrivastava v. Union of India**^[5], **Shambu Murari Sinha v. Project & Development India**^[6], **Srikantha S.M. v. Bharath Earth Movers Ltd.**^[7].

On the other hand, the learned counsel for the respondents- Andhra Bank submitted that the petitioner has not come to the Court with clean hands. He submitted that the petitioner filed the first writ petition averring as if he was in active service with the respondents. He

submitted that the petitioner's request for voluntary retirement having been accepted, was relieved from service, and he was also paid the terminal benefits, and therefore, he is not entitled to seek his continuance in service. He submitted that the petitioner assailed the order of rejection of his request for withdrawal of his application for voluntary retirement after lapse of three years. In support of his arguments, he placed reliance on the judgments, namely **Punjab & Sind Bank v. S. Ranveer Singh Bawa**^[8], **Gyanendra Sahay v. Tata Iron & Steel Co. Ltd.**^[9] and **Chand Mal Chayal v. State of Rajasthan**^[10].

Having heard the learned counsel for the petitioner and the learned counsel for the respondents, the following questions do arise for consideration in the writ petitions:

1. **Whether in the facts and circumstances of the case, the petitioner is entitled to seek withdrawal of his application for voluntary retirement before the expiry of the three months notice period?**
2. **If so, whether the 2nd respondent was justified in rejecting the application of the petitioner for withdrawing his application for voluntary retirement?**
3. **Whether the petitioner having been relieved from service and having received the terminal benefits, is not entitled to the reliefs claimed?**
4. **If not, whether the petitioner is entitled to be granted the relief of reinstatement with all consequential and monetary benefits?**

Before proceeding to answer the above questions, the factual aspects of the case may be noted:

The petitioner, admittedly, submitted application for voluntary retirement under the Andhra Bank (Employees) Pension Regulations, 1995 to the 2nd respondent, namely the General Manager, on 12.04.2004. The body of the application reads as under:

I submit my application for voluntary retirement under Pension Scheme.

I have joined the service on 13th May, 1977 and completed a total service of 27 years.

Please accept the application and relieve from the services as per the rules in force by

treating this as three months notice.

Since the petitioner made the application for voluntary retirement on 12.04.2004, the three months notice period mentioned therein would expire on 11.07.2004. Though the petitioner submits that within one week from the date of his making application for voluntary retirement, he made another application dated 19.04.2004, requesting the respondents to treat his application dated 12.04.2004 for voluntary retirement as withdrawn, the fact remains, the respondents denied having received the same. However, the Deputy General manager (Per) issued letter dated 21.04.2004 to the petitioner informing him about the acceptance of his application dated 12.04.2004 for voluntary retirement by the competent authority. The said letter reads:

We wish to inform you that your application for voluntary retirement under Pension Regulations has been accepted by the competent authority. Please note that:

1. You will be relieved from Bank's service on 11.07.2004 i.e. after expiry of the notice period of three months.
2. The total terminal benefits payable to you would be around Rs. 5.81 lakhs. The loans and dues outstanding in your name as on date including credit care and furniture account are around Rs.6.65 lakhs. In the meanwhile, you are advised to pay the difference amount before your relief.

Before expiry of the three months notice period, the petitioner again on 24.06.2004, addressed another application, both to the Chairman and Managing Director and the General Manager of Andhra Bank, requesting them to reconsider his request for withdrawal of his application dated 12.04.2004 for voluntary retirement. The same having been considered, the 2nd respondent, namely the General Manager, vide orders dated 09.07.2004, declined to accord permission to the petitioner for withdrawal of his option for voluntary retirement on the ground that the reasons assigned by him are not genuine, and further informed him that he will stand relieved on 12.07.2004. Accordingly, on 12.07.2004, the Deputy General Manager (Per), issued letter to the petitioner relieving him from service. The said letter reads:

This has reference to our letter No. 666/20/IR/352, dated 09.07.2004. Since 11.07.2004

has fallen on Sunday, you are hereby relieved from the service of the Bank today i.e., 12.07.2004 at 10.00 a.m. i.e., at the commencement of the office hours.

We place on record the meritorious services rendered by you to this great institution and we are sure that you have derived full satisfaction in serving the Bank all these years.

Wish you a very happy and peaceful retired life.

In Re question No.1:

There is no doubt that the Deputy General Manager (Per) vide his letter dated 21.04.2004 informed the petitioner that his application dated 12.04.2004 for voluntary retirement under the Pension Regulations has been accepted and that he will be relieved from the Bank's service on 11.07.2004, but the fact remains, in such acceptance, the respondents did not sever the relationship of employee and employer between the petitioner and the respondents immediately on acceptance, for the petitioner was informed that he would be relieved from service on 11.07.2004.

The fact whether the date of acceptance or the date on which the employee is to be relieved is crucial for determining the eligibility of the employee to withdraw his resignation/voluntary retirement, was considered by the apex Court in **Balram Gupta v. Union of India**. The apex Court, in the said case, while rejecting the contention of the government that once notice of resignation is issued and accepted, it would amount to dissolution of contract between the employee and the employer immediately, held that the dissolution of contract would be brought about only on the date indicated, that is the date of relieving, and up to that date the employee was a government employee, and as such, he has *locus poenitentiae* to withdraw his application for voluntary retirement.

The apex Court in **Punjab National Bank v. P.K. Mittal**, while finding fault with the decision taken by the Bank in accepting the resignation of the employee with immediate effect, held that resignation of the employee would become effective only on the expiry of the three

months notice from the date thereof or from the date on which he wished to resign, and as such, it was open to the employee to withdraw his letter of resignation before the expiry of the notice period. In holding so, it referred to its earlier judgments in **Raj Kumar v. Union of India**^[11], **Union of India v. Gopal chandra Misra**^[12] and **Balram Gupta**.

The apex Court in **J.N. Srivastava v. Union of India**, following the judgment in **Balram Gupta**, held that the appellant before it cannot be said to have no *locus standi* to withdraw his proposal for voluntary retirement before 31.01.1990, on which date he was to be relieved from service. Again in **Shambhu Murari Sinha v. Project & Development India**, the apex Court following its judgments in **Balram Gupta**, **J.N. Srivastava** and **Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia**, held that resignation, in spite of its acceptance, can be withdrawn before the “effective date”.

In **Srikantha S.M. v. Bharath Earth Movers Ltd.**, the apex Court while upholding the contention of the employee that even though the company accepted his resignation on 04.01.1993 and ordered that he would be relieved on that day, but having regard to the fact that by subsequent letter, granted casual leave from 05.01.1993 to 13.01.1993, and informed him that he would be relieved from service after office hours on 15.01.1993, held that in its opinion *vinculum juris* continued and the relationship of employer and employee did not come to an end on 04.01.1993, and that it continued up to 15.01.1993, and as such, the employee was entitled to withdraw his resignation.

In view of the ratio laid down by the apex Court in the aforementioned judgments, it can safely be said that since the petitioner was to be relieved from service after expiry of the three months notice period on 11.07.2004, he shall be deemed to be continued to be employee of the respondents-Bank upto that date, and as such, he had the *locus*

poenitentiae to withdraw his application for voluntary retirement before the said date. Accordingly, question No.1 is answered in favour of the petitioner and against the respondents.

In Re question No.2:

The learned Standing Counsel for the respondents submits that under Regulation 29(4) of the Andhra Bank (Employees) Pension Regulations, 1995 an employee who has elected to retire under the regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority, provided that the request for such withdrawal shall be made before the intended date of his retirement. In view of this regulation, he contends that the petitioner is precluded from withdrawing the notice except with the specific approval from the competent authority, and even though the competent authority having considered the request of the petitioner for withdrawal of his application for voluntary retirement, rejected the same by orders passed as far back as on 09.07.2004, and thereafter, he was relieved from service on 12.07.2004 the petitioner did not assail the same immediately and filed the first writ petition asserting as if he was in active service of the respondents, and filed the second writ petition assailing the same after lapse of three years, which are liable to be dismissed.

There is no doubt that the petitioner filed the first writ petition as if he was in active service of the respondents and he filed second writ petition assailing the order dated 09.07.2004, passed by the 2nd respondent rejecting his request for withdrawal of his application dated 12.04.2004 for voluntary retirement, and the consequential order dated 12.07.2004 relieving him from service, after lapse of three years, but that by itself does not mean that he is not entitled to assail the same, and more so when his right to livelihood stood affected by the said order.

Admittedly, the petitioner filed the first writ petition seeking a direction to the respondents to accept his letter dated 24.06.2004 withdrawing his application dated 12.04.2004 for voluntary retirement and continue him in service. Since the petitioner had already filed the first writ petition seeking a direction to the respondents to accept his application dated 24.06.2004 withdrawing his application dated 12.04.2004 for voluntary retirement, it would not be proper for this Court, to reject the second writ petition filed by the petitioner assailing the order dated 09.07.2004 passed by the 2nd respondent declining to permit him to withdraw his application dated 12.04.2004 for voluntary retirement and the consequential order dated 12.07.2004 relieving him from service.

Since this Court had held that the petitioner continued to be the employee of the Bank till 11.07.2004, and that he had *locus poenitentiae* to withdraw his application for voluntary retirement before the said date, it may be noticed whether the 2nd respondent in rejecting the application dated 24.06.2004, made by the petitioner, withdrawing his application dated 12.04.2004 for voluntary retirement, had acted reasonably and rationally.

This question has to be considered in the light of the ratio laid down by the apex Court in **Balram Gupta**, for the facts situation arising in this case and **Balram Gupta**, is one and the same. The apex Court in **Balram Gupta** was faced with similar facts, as are appearing in the present case. An employee of the Central Government by letter dated 24.12.1980 indicated his intention to take voluntary retirement from 31.03.1981, and requested to treat the notice period w.e.f. 01.01.1981. Acting on the said letter, the Central Government by order dated 20.01.1981, allowed the employee to retire voluntarily from service prospectively w.e.f. 31.03.1981. On account of persistent and personal

requests from the staff members, the employee changed his mind, and by letter dated 31.01.1981 requested the Central Government to grant permission to withdraw his notice of voluntary retirement. Without accepting his request, the Central Government by order dated 31.03.1981 retired the employee informing him that his requested contained in the letter dated 31.01.1981 for withdrawal of his application for voluntary retirement, was considered and it was found not acceptable. Assailing the said order, the employee approached the High Court of Delhi, dismissed the writ petition of the employee on the ground that the rules enabled the government servant to withdraw his application for voluntary retirement only with the approval of the government. Questioning the said order of the Delhi High Court, the employee moved the apex Court in appeal.

The main question before the apex Court was as to whether sub-rule (4) of Rule 48-A of the Central Civil Services (Pension) Rules, 1972 was valid, and if so whether the power exercised under sub-rule (4) of Rule 48-A was proper. Rule 48-A(4), which is in *pari materia* with Regulation 28(4) of the Regulations, precludes a government servant from withdrawing his notice “except with the specific approval of such authority”. Since the resignation of the government was to take effect at a subsequent date prospectively and the withdrawal was long before that date, the apex Court felt that it was not necessary to decide whether sub-rule (4) of Rule 48-A was valid or not. Accordingly, without expressing any opinion on the validity or otherwise of Rule 48-A(4) held that if the said power was properly exercised, the power of the government may be a salutary rule, and approval, however, was not *ipse dixit* of the approving authority. It held that the approving authority who has the statutory authority, must act reasonably and rationally. Considering the reasons assigned by the employee for withdrawing his resignation, *namely that on the persistent and personal requests of the*

staff members he had dropped the idea of seeking voluntary retirement, the apex Court felt that how the said reason could not be a good and valid reason, for withdrawal of resignation. The apex Court found nothing wrong in the employee not mentioning any reason for his seeking voluntary retirement, and held that no embargo should be put upon people's choice or freedom, in the following words:

... It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age, we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set up or arrangement was effected...

Having held so, the apex Court further held that the administration should be flexible to the human mind and attitude in the following words:

In the modern and uncertain age, it is very difficult to arrange one's own future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstance of the case. Much complications which had arisen could have been thus avoided by such graceful attitude. The Court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees.

In the instant case, though the petitioner has not assigned any reason in his application dated 12.04.2004 for voluntary retirement, but in his application dated 24.06.2004 submitted to the respondents, requesting them to accord sanction for withdrawal of his application dated 12.04.2004, apart from the reason of frequent transfers, he stated that due to severe backache in spinal chord for which he was undergoing medical treatment, he had opted for voluntary retirement earlier, and since there was improvement in his health condition, he intends to withdraw his application for voluntary retirement, and expressed his willingness and desire to work for the organization. The said application dated 24.06.2004 reads as follows:

While I was working in Bhubaneswar Zonal Office, I faced a health problem and upon

my request, I was transferred to Head Office, Marketing Department vide Head Office Office Order No., 666/3/B/TR/1280, dt. 02.01.2004. It was specifically mentioned in the Transfer Order that it is for a period of four months. Accordingly, I reported for duty at Head Office on 16.01.2004.

While medical treatment is in progress and I am slowly improving from backache in spinal chord, I was all of a sudden transferred to New Delhi Zone vide Office Order dated 03.04.2005, even before the four months period which was given to me for undergoing medical treatment. My transfer to New Delhi Zone put me in panic and my doctor also advised that I should come for periodical check-ups. When I was advised to get relieved immediately, I was in perturbed condition and in view of the compulsion on account of medical treatment, I was constrained to opt for voluntary retirement under Pension Regulations. My voluntary retirement was accepted and I am advised to get relieved on 11.07.2004.

In the meanwhile, my health condition has improved and I am prepared to serve my esteemed organization.

In view of my attachment with our Bank for the last 27 years, I prefer to reconsider my decision and opt to withdraw from voluntary retirement as per ABOSR.

I request your kindness to consider according permission to me to withdraw my resignation and also permit me to work in the great organization during your tenure. I shall be grateful for the above act of kindness.

The 2nd respondent, General Manager (Per), in the order dated 09.07.2004, even though referred to the contents of the aforesaid application dated 24.06.2004 of the petitioner, and acknowledged the chronic backache problem of the petitioner, but curiously rejected the request of the petitioner to withdraw his application dated 12.04.2004 for voluntary retirement on the ground that the reasons assigned by him are not genuine, but were invented to gain some unfair advantage. The fact that the petitioner was suffering from health problems, is evident from the correspondence placed before this Court, which he made to the respondents, prior to the making of his application dated 12.04.2004 for voluntary retirement. Whatever be the reasons taken by the petitioner for withdrawing his application for voluntary retirement, but such request having been made by the petitioner before he was relieved from service on 11.07.2004, the 2nd respondent should have considered the same positively, and more so when petitioner expressed his preparedness and willingness to serve the organization. Thus, it is clear that the 2nd respondent, in rejecting the rejecting the application dated 24.06.2004 of the petitioner to accord permission to the petitioner to withdraw his

application dated 12.04.2004 for voluntary retirement, by order dated 09.07.2004, has not acted reasonably and rationally. Hence, the same is liable to be set aside. Accordingly, question No.2 is answered in favour of the petitioner and against the respondents.

In Re question No.3:

The learned Standing Counsel for the respondents relying on the judgments of the apex Court in **Punjab & Sind Bank v. S. Ranveer Singh Bawa** and **Gyanendra Sahay v. Tata Iron & Steel Co. Ltd.**, submitted that once the employee makes application for retirement voluntarily and later withdraws the same, but receives the benefits of the VRS, and there being no undue pressure on the employee to apply for VRS, he is not entitled to turnaround and contend that his request for withdrawal of his application for voluntary retirement, should be accepted and continued in service. The petitioner does not dispute the fact that he submitted application for retirement voluntarily and there was no undue pressure on him for making such an application. However, the fact remains that before expiry of the three months notice period and before he was relieved from service, he made another application on 24.06.2004, both to the Chairman and Managing Director and General Manager of the Andhra Bank, requesting them to permit him to withdraw his application for voluntary retirement. However, the respondents without accepting the said request of the petitioner relieved him from service immediately after expiry of the three months notice period. The amounts payable to the petitioner were also paid to him after the expiry of the notice period. Therefore, the facts of the present case, are somewhat different from the facts, which the apex Court had to consider in the judgments relied upon by the learned Standing Counsel for the respondents, and the facts of the said cases not being similar to the case on hand, the ratio laid down in the said judgments, cannot be made applicable to the present case.

Reliance placed by the learned Standing Counsel for the respondents on the judgment of the apex court in **Chand Mal Chayal v. State of Rajasthan** in support of his argument that resignation can be permitted to be withdrawn only before its acceptance, does not help the respondents in any manner, for the facts of the said cases are entirely different from the facts of the present case, and they can be easily distinguished. In the instant case, as stated supra, the petitioner made application seeking withdrawal of his application for voluntary retirement before he was relieved from service, he is not seeking re-employment, but seeking to continue him in service, by accepting his application for withdrawal of his application for voluntary retirement, which was made before he was relieved from service. Whereas in the case before the apex court, the employee who was working as Reader/Court Master in the Magistrate Court resigned from service on 27.01.1990, it was accepted on 28.01.1990 and he was relieved on 29.01.1990. After being relieved from service, he filed nomination on 02.02.1990 to contest an election, but subsequently withdrew. Thereafter, he filed an application dated 02.02.1990 requesting him to provide re-employment. Since there was no provision for re-employment, the apex Court held that once resignation is accepted and the employee is relieved from service, he is not entitled to seek re-employment, but that is not the case on hand, as distinguished supra. In that view of the matter, it cannot be said that the petitioner is not entitled to claim the reliefs as prayed in the writ petition. Accordingly, question No.3 is answered.

In Re question No.4:

Now that this Court has set aside the order dated 09.07.2004, passed by the 2nd respondent rejecting the application of the petitioner 24.06.2004 to permit him to withdraw the application dated 12.04.2004 for voluntary retirement, the question that arises for consideration is whether the petitioner is entitled to be reinstated into service with all

consequential and monetary benefits. The petitioner in support of his argument that he is entitled to be reinstated into service with consequential and monetary benefits, placed reliance on the judgment in **Nagesh B. Prabhu v. Syndicate**^[13], wherein the Karnataka High Court, interpreted Regulation 29(4) of the Regulations in the light of the facts before it. The Karnataka High Court while rejecting similar contention as is raised by the respondents herein that after accepting the application of the petitioner for voluntary retirement, they made alternative arrangements, and as such, there is no post to accommodate the petitioner, held as follows:

Under Regulation 29(4) of the Pension Regulations, an employee/officer, who has opted to retire from service voluntarily under the Pension Regulations is prevented from withdrawing the notice of retirement from service except with the specific approval of the competent authority and the request for withdrawal requires to be made before the effective date of his retirement. That means, the Bank has the discretion either to accept or reject the request of an employee/officer, seeking permission to withdraw the notice of voluntary retirement from service. The Bank being an authority coming within the meaning of Art. 12 of the Constitution is expected to act fairly and reasonably in exercise of its discretion while considering the request by an employee/officer to withdraw his notice of retirement from service. In the instant case, petitioner files a representation before the competent authority of the respondent Bank to permit him to withdraw his notice of voluntary retirement from service before the effective date namely, January 1, 2000. That representation is acknowledged by the respondent Bank. The competent authority refuses the request made by the petitioner only on the ground that the Bank has already made alternate postings and therefore, their decision conveyed in their communication dated December 17, 1999 stands. Two things require to be considered at this stage. Firstly, whether the reasons assigned by the Bank to reject the reasonable request of the petitioner is justified? And secondly, whether the Bank has really made any alternate postings as stated by them in their impugned communication? As stated by me earlier, the competent authority of the bank is expected to act fairly and judiciously in exercise of his discretion and he cannot abdicate his duty to act reasonably to match the "game plan" of the petitioner. The respondent Bank could have rejected the request of the petitioner, if they really had posted a person to work as a Chief Manager at Ludhiana Branch, where petitioner was transferred and posted just before he tendered his notice of retirement from service, but it has come on record that one Mr. Shenoy was posted to the branch only on January 28, 2000 much later to the rejection of the request of the petitioner for withdrawal of his notice of retirement. Even otherwise also, petitioner's offer to voluntarily retirement from service and withdrawal of the same happened in quick succession and therefore, it cannot be said that any administrative set up or arrangement was effected in any manner whatsoever. Therefore, the reason projected by the Bank in their impugned communication is not only arbitrary but also contrary to the facts, which have come on record by way of affidavits by both the parties.

Holding so, the Karnataka High Court allowed the writ petition of

the employee before it with all consequential and monetary benefits.

It may, therefore, be noticed whether the petitioner is also entitled to be granted all consequential and monetary benefits, upon his reinstatement into service. Though in the instant case, the respondents have taken a stand that they had made alternative arrangements by posting another in the place of the petitioner, the fact remains, no details such as to who has been posted in the place of the petitioner and when, are stated. No doubt the

2nd respondent in rejecting the application of the petitioner dated 24.06.2004 to accord permission for withdrawal of his application dated 12.04.2004, has not acted reasonably and rationally, and as such, the impugned order dated 09.07.2004 rejecting his request to withdraw his application for voluntary retirement, and the consequential order dated 12.07.2004, relieving him from service are liable to be set aside, but the fact remains, the petitioner has not assailed the said orders immediately, but has assailed them by filing the second writ petition only on 08.08.2007 i.e. after lapse of nearly two years.

This apart, it is the case of the respondents, which is admitted to by the petitioner that he having been relieved from service on 11.07.2004, was paid an amount of Rs.5,02,540/- towards gratuity and leave salary, an amount of Rs.37,982/- towards PF contribution, Rs.2,61,574.04 ps. towards commuted value of the pension, and that presently he is drawing pension with basic of Rs.13,496.33 ps. + DA thereon as per the Rules.

The petitioner having not assailed the order rejecting his application to withdraw his application for voluntary retirement and the consequential order retiring him and relieving from service immediately, and he having received all the terminal benefits, I am of the considered opinion that the petitioner except for consequential benefits, like continuity of service and other allied benefits, is not entitled to claim any

monetary benefits.

The judgment of the Karnataka High Court in **Nagesh B. Prabhu v. Syndicate Bank**, relied upon by the petitioner in support of his claim for monetary benefits consequent upon his reinstatement into service, is of no avail to the petitioner for the reason that in the said case, the petitioner therein had assailed the action of the respondents in not permitting him to withdraw his request for voluntary retirement immediately after its passing. While in the instant case, the petitioner after his retirement from service, filed the first writ petition seeking direction to the respondents to treat his application for voluntary retirement as withdrawn on 28.10.2005, and thereafter, after lapse of nearly two years, filed the second writ petition assailing the order dated 09.07.2004 rejecting his application to withdraw his application for voluntary retirement and the consequential order dated 12.07.2004 retiring and relieving him from service on 08.08.2007.

In the above view of the mater, I hold that the petitioner, except for consequential benefits, is not entitled to any monetary benefits upon his reinstatement into service. Accordingly, question No.4 is answered in favour of the respondents and against the petitioner.

In the result, the writ petitions are partly allowed. The order dated 09.07.2004 passed by the 2nd respondent rejecting the application of the petitioner for withdrawal of his application for voluntary retirement and the consequential order dated 12.07.2004 relieving him from service, assailed in the second writ petition are set aside. The respondents are directed to reinstate the petitioner into service with consequential but not monetary benefits. The petitioner shall return the amounts paid to him by the respondents pursuant to his retirement. No costs.

N.V. RAMANA, J.

Dated: 14th December, 2007

Note:

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[\[1\]](#) 1987 (Supp) SCC 228

[\[2\]](#) W.P. No. 13288 of 2000, dated 11.08.2000 (Single Judge of AP High Court)

[\[3\]](#) (1998) III LLJ 947 (AP High Court)

[\[4\]](#) 2004-II-LLJ 83 (Karnataka High Court)

[\[5\]](#) (1998) 9 SCC 559

[\[6\]](#) (2000) 5 SCC 621

[\[7\]](#) (2005) 8 SCC 314

[\[8\]](#) (2004) 4 SCC 484

[\[9\]](#) (2006) 5 SCC 759

[\[10\]](#) 2006 (111) FLR 753

[\[11\]](#) (1968) 3 SCR 857 = AIR 1969 SC 180

[\[12\]](#) (1978) 3 SCR 12 = AIR 1978 SC 694

[\[13\]](#) 2004-II-LLJ 83